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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

WHITNEY ANN BARNES,

Defendant.

2:21-CR-045-JCM-DJA

**Government's Motion to Prevent
Foreclosure under 21 U.S.C. § 853(k)**

The government moves this Court to issue an order to prevent Prestige Default Services, LLC, from proceeding with a mortgage foreclosure sale on 4872 Long Acres Lane, Caliente, NV 89008 (property)¹ scheduled for January 27, 2023. The government is filing this motion contemporaneously with its Motion to Substitute and to Forfeit Property of Whitney Ann Barnes. 21 U.S.C. § 853(k) prohibits Prestige from foreclosing on the property because the government has alleged the property is subject to forfeiture in its Motion to Substitute and Forfeit the property. Pending this Court's decision on the government's Motion to Substitute and Forfeit, this Court should grant this motion and issue the order.

¹ THAT PORTION OF GOVERNMENT LOT 4 COMMONLY DESCRIBED AS THE NORTHWEST QUARTER (NW1/4) OF THE NORTHWEST QUARTER (NW1/4) OF SECTION 2, TOWNSHIP 3 SOUTH, RANGE 67 EAST, M.D.B. & M., MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 3 OF THAT CERTAIN PARCEL MAP RECORDED OCTOBER 2, 1998 IN THE OFFICE OF THE COUNTY RECORDER OF LINCOLN COUNTY NEVADA IN BOOK B OF PLATS PAGE 154 AS FILE NO. 111670 LINCOLN COUNTY, NEVADA RECORDS, APN: 13-030-32 (property).

1 This motion is made and is based on the attached Memorandum of Points and
 2 Authorities, the pleadings and papers on file herein, and the attached Exhibit.

3 MEMORANDUM OF POINTS AND AUTHORITIES

4 I. STATEMENT OF FACTS

5 From at least July 1, 2019, through February 19, 2020, Barnes stole currency and
 6 property from the Caliente Post Office when she issued, and later cashed, Post Office
 7 money orders that she did not purchase. Barnes and her husband later cashed those money
 8 orders. Barnes also stole directly from the Post Office's deposit bag, from her own cash
 9 drawer, and from the stamp unit reserve. USPS suffered a loss of \$19,859.39 in currency and
 10 property. Although Barnes has paid back some of the money, the outstanding loss to USPS
 11 is \$13,108.10.²

12 Barnes pled guilty to Count One of a One-Count Criminal Information charging her
 13 with theft of government property. Barnes agreed to the imposition of the in personam
 14 criminal forfeiture money judgment of \$18,400 and this Court entered the Final Order of
 15 Forfeiture.³

16 The government is filing this motion contemporaneously with its Motion to
 17 Substitute and Forfeit Property of Whitney Barnes. The government recently received the
 18 Notice of Trustee Sale from Prestige stating a sale date of January 27, 2023, listing the
 19 property as being subject to a foreclosure.⁴

20 II. ARGUMENT

21 **This Court Has Authority to Prevent Prestige from executing a Mortgage Foreclosure**
 22 **Sale of the property Under 21 U.S.C. § 853(k).**

24
 25 ² Criminal Information (CI), ECF No. 4; Plea Agreement (PA), ECF No. 6; Arraignment
 26 and Change of Plea (AP), ECF No. 8; Preliminary Order of Forfeiture (POOF), ECF No.
 27 11; Final Order of Forfeiture (FOOF), ECF No. 21; Criminal Judgment (CJ), ECF No. 22.
³ *Id.*; for violation of 18 U.S.C. § 641 with forfeiture under 18 U.S.C. § 981(a)(1)(C) with 28
 U.S.C. § 2461(c) and 21 U.S.C. § 853(p).

28 ⁴ Notice of Trustee's Sale, Exhibit 1, attached hereto and incorporated herein by reference
 as if fully set forth herein.

When Barnes pleaded guilty to the One-Count Criminal Information charging her with theft of government property, this Court found that, “on the government’s motion, the Court may at any time enter an order of forfeiture or amend an existing order of forfeiture to include subsequently located property or substitute property pursuant to Fed. R. Crim. P. 32.2(e) and 32.2(b)(2)(C).”⁵ To prevent third parties claiming an interest in forfeitable property from interfering with the orderly conduct of criminal cases, Congress prohibits third parties from commencing actions against the interest of the United States in forfeitable property after an indictment has been filed.⁶ If this Court grants the government’s contemporaneous Motion to Substitute and Forfeit the subsequently located property, the property would then be forfeitable.

In *MacInnes*, the Ninth Circuit expressly held a foreclosure sale is “an action at law or equity against the United States in contravention of § 853(k).”⁷ The mortgage foreclosure sale is statutorily barred.⁸ If this Court grants the government’s contemporaneous Motion to Substitute and Forfeit the subsequently located property, the foreclosure sale by Prestige would be an action against the United States under 21 U.S.C. § 853(k).

If the foreclosure sale is stayed by this Court, the government will serve Prestige and other interested parties with the Order. The interested parties can then request an ancillary hearing under 21 U.S.C. § 853(n). “Section 853(n) provides the process for vindicating a third party’s interests in forfeited property. The law appears settled that an ancillary proceeding constitutes the only avenue for a third party claiming an interest in seized

⁵ Fed. R. Crim. P. 32.2(e) and 32.2(b)(2)(C); FOOF, ECF No. 21; CJ, ECF No. 22.

⁶ 21 U.S.C. § 853(k).

⁷ *United States v. MacInnes*, 223 F. App’x 549, 550, 553-54 (9th Cir. 2007) (per curiam) (citing *United States v. Phillips*, 185 F.3d 183, 187-88 (4th Cir. 1999) (holding “the foreclosure action constituted ‘an action at law or equity against the United States’ and was statutorily barred under § 853(k)” quoting 21 U.S.C. § 853(k)); *United States v. Lazarenko*, 476 F.3d 642, 648 (9th Cir. 2007) (explaining third party cannot bring an action at law or equity) (citing 21 U.S.C. § 853(k)).

⁸ See *United States v. Phillips*, 185 F.3d 183, 187-88 (4th Cir. 1999) (ellipsis added) (holding “the foreclosure action ... was statutorily barred under § 853(k)”; *In re America Basketball League, Inc.*, 317 B.R. 121, 129 (Bankr. N.D. Cal. 2004) (“Consistent with the plain language of the statute, the case law has uniformly found that § 853(k) imposes an absolute bar to actions that assert an interest in forfeitable property if they are commenced outside of the ancillary proceedings.”).

property.”⁹ Under 21 U.S.C. § 853(c), (k), and (n), a mortgage foreclosure sale against the government’s interest in the property is an action against the United States, outside the confines of the exclusive ancillary procedure of § 853(n), and is therefore barred.¹⁰

Accordingly, when a property is identified as forfeitable by this Court, third parties are prohibited from foreclosing on that property.¹¹ A third party’s only recourse is to petition the Court in the process identified in Section § 853(n).¹²

III. CONCLUSION

The United States identified 4872 Long Acres Lane, Caliente, NV 89008 as a forfeitable property when it filed its Motion for Substitution and Forfeiture contemporaneously with this Motion. This possible mortgage foreclosure sale violates 21 U.S.C. § 853(k) if this Court grants the government’s Motion to Substitute and Forfeit. Accordingly, the Court should enter an order prohibiting the foreclosure sale.

Dated: January 19, 2023.

Respectfully submitted,

JASON M. FRIERSON
United States Attorney

/s/ Misty L. Dante
MISTY L. DANTE
Assistant United States Attorney

IT IS SO ORDERED


DANIEL J. ALBREGTS
UNITED STATES MAGISTRATE JUDGE

Dated: January 24, 2023

⁹ *Lazarenko*, 476 F.3d at 648 (explaining “a court adjudicates a third party’s interest in the forfeited property in an ancillary proceeding after concluding the criminal case and entering a preliminary order of forfeiture.”); Fed. R. Crim. P. 32.2(b) advisory committee’s note (bracket added) (“[T]hird party interests in a criminally forfeited property are litigated by the court in the ancillary proceeding following the conclusion of the criminal case and the entry of a preliminary order of forfeiture.”); 21 U.S.C. § 853(n); 18 U.S.C. § 1963(l).

¹⁰ *Lazarenko*, 476 F.3d at 646-48, 650, 652; *Phillips*, 185 F.3d at 187-88; footnotes 9-11.

¹¹ *MacInnes*, 223 F. App’x at 550, 553-54.

¹² *Id.*; see footnote 11-12.

CERTIFICATE OF SERVICE

On January 19, 2023, I hereby certify that a copy of the foregoing **Government's Motion to Prevent Foreclosure under 21 U.S.C. § 853(k)** was served upon counsel of record via CM/ECF Electronic Filing, and to the following individuals and entities by the stated methods:

By First Class Mail & Certified Mail with Return Receipt:

David L. Barnes
4872 Long Acres Ln.
Caliente, NV 89008

Whitney Ann Barnes
4872 Long Acres Ln.
Caliente, NV 89008

David L. Barnes
3 Long Acres Ln
Caliente, NV 89008

Whitney Ann Barnes
3 Long Acres Ln
Caliente, NV 89008

Prestige Default Services, LLC
1920 Old Tustin Ave.
Santa Ana, CA 92705

Jeffrey Gregory, Foreclosure Assist.
c/o Prestige Default Services, LLC
1920 Old Tustin Ave.
Santa Ana, CA 92705

Briana Young, Trustee Sale Officer
c/o Prestige Default Services, LLC
1920 Old Tustin Ave.
Santa Ana, CA 92705

Prestige Default Services, LLC
c/o CT Corporation System as
Registered Agent
701 S. Carson St., Suite 200
Carson City, NV 89701

Prestige Default Services, LLC
c/o Michelle Ghidotti, Officer
123 W. Nye Lave, Suite 129
Carson, City, NV 89706

Quicken Loans Inc.
c/o CT Corporation System as
Registered Agent
701 S. Carson St., Suite 200
Carson City, NV 89701

WFG National Title Insurance Company
c/o Corporation Service Company as
Registered Agent
112 North Curry Street
Carson City, NV 89703

WFG National Title Insurance Company
330 S. Rampart, Suite 350
Las Vegas, NV 89145

U.S. Bank Trust National Assoc. as
Trustee for BKPL-EG Holding Trust
300 Delaware Ave., 9th Floor
Wilmington, DE 19801

Lincoln County Assessor's Office
c/o Cydney Dwire, Assessor
181 North Main Street, Suite 203
Pioche, NV 89043

Lincoln County Recorder/Auditor's Office
c/o Amy Elmer, Recorder/Auditor
181 North Main Street, Suite 202
Pioche, NV 89043

Lincoln County District Attorney's Office
c/o Dylan Frehner, District Attorney
181 North Main Street, Suite 205
Pioche, NV 89043

Lincoln County Treasurer
c/o Shawn Frehner, Treasurer
181 North Main Street, Suite 204
Pioche, NV 89043

Lincoln County Clerk's Office
c/o Lisa C. Lloyd, County Clerk
181 North Main Street, Suite 201
Pioche, NV 89043

Lincoln County Commissioner Office
PO Box 90
Pioche, NV 89043

Lincoln County Water District
c/o Wade Poulsen, General Manager
1005 Main Street
Panaca, NV 89042

By First Class Mail:

David L. Barnes
PO Box 751
Caliente, NV 89008

Whitney Ann Barnes
PO Box 751
Caliente, NV 89008

David L. Barnes
PO Box 555
Caliente, NV 89008

Whitney Ann Barnes
PO Box 555
Caliente, NV 89008

/s/ Maritess Recinto
MARITESS RECINTO
Paralegal Specialist
US Attorney's Office

JASON M. FRIERSON
United States Attorney
Nevada Bar No. 7709
MISTY L. DANTE
Assistant United States Attorney
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Index of Exhibit

Exhibit 1 Notice of Trustee's Sale

Exhibit 1 - Notice of Trustee's Sale

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APN: 13-030-32

Prestige Default Services, LLC
1920 Old Tustin Ave.
Santa Ana, California 92705

T.S. No.: 22-5834
Loan No.: *****727

LINCOLN COUNTY, NV	2022-163555
\$37.00	
Rec:\$37.00	12/21/2022 12:00 PM
WFG NATIONAL TITLE INSURANCE CO	Pgs=3 KC
OFFICIAL RECORD	
AMY ELMER, RECORDER	

The undersigned hereby affirms that there is no Social Security number contained in this document.

NOTICE OF TRUSTEE'S SALE IMPORTANT NOTICE TO PROPERTY OWNER

YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 2/18/2003. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

On 1/27/2023 at 11:00 AM, Prestige Default Services, LLC, as duly appointed Trustee WILL SELL AT PUBLIC AUCTION OT THE HIGHEST BIDDER FOR CASH at the Main entrance to County Courthouse, 181 Main Street, Pioche, Nevada, all right, title and interest conveyed to and now held by it under and pursuant to Deed of Trust recorded on 2/26/2003 as Instrument No. 119718 in book 170, page 479 , of the official records in the Office of the Recorder of Lincoln County, Nevada, executed by DAVID L. BARNES AND WHITNEY A. BARNES, HUSBAND AND WIFE AS JOINT TENANTS, as Trustor, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR QUICKEN LOANS INC., ITS SUCCESSOR AND ASSIGNS as Beneficiary, all that certain property situated in said County and State, and more commonly described as:
As more fully described in said Deed of Trust

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE COUNTY OF LINCOLN, STATE OF NEVADA, DESCRIBED AS FOLLOWS:

THAT PORTION OF GOVERNMENT LOT 4 COMMONLY DESCRIBED AS THE NORTHWEST QUARTER (NW1/4) OF THE NORTHWEST QUARTER (NW1/4) OF SECTION 2, TOWNSHIP 3 SOUTH, RANGE 67 EAST, M.B.D. & M., MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 3 OF THAT CERTAIN PARCEL MAP RECORDED OCTOBER 2, 1998 IN THE OFFICE OF THE COUNTY RECORDER OF LINCOLN COUNTY NEVADA IN BOOK B OF PLATS PAGE 154 AS FILE NO. 111670 LINCOLN COUNTY, NEVADA RECORDS.

A.P.N.: 13-030-32

The property heretofore described is being sold "as is". The street address and other common designation, if any, of the real property described above is purported to be: **4872 LONG ACRES LN, CALIENTE NEVADA 89008**

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designation, if any, shown above. Said sale will be made, but without covenant or warranty expressed or implied, regarding title, possession or encumbrances, to pay the remaining unpaid balance of \$89,724.63, the obligations secured by the property to be sold and reasonably estimated costs, expenses and advances as of the first publication



date of this Notice of Trustee's Sale. Accrued interest and additional advances, if any, will increase the figure prior to sale. The property offered for sale excludes all funds held on account by the property receiver, if applicable.

Beneficiary's bid at sale may include all or part of said amount. In addition to cash, the Trustee will accept, all payable at time of sale in lawful money of the United States a Cashier's check drawn by a state or national bank, a check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in the applicable sections of the Nevada Administrative Code and authorized to do business in the State of Nevada, or other such funds acceptable to the Trustee.

The Beneficiary under the Deed of Trust heretofore executed and delivered to the undersigned, a written Declaration of Default and Demand for Sale. The undersigned caused said Notice of Breach and Default and of Election to Cause Sale of Real Property Under Deed of Trust to be recorded in the County where the real property is located and more than three months have elapsed since such recording.

If the Trustee is unable to convey title for any reason, the successful bidder's sole and exclusive remedy shall be the return of monies paid to the Trustee and the successful bidder shall have no further recourse.

**SALE INFORMATION CAN BE OBTAINED ONLINE AT <https://mkconsultantsinc.com/trustees-sales/>
FOR AUTOMATED SALES INFORMATION PLEASE CALL: (877) 440-4460**

Date: 12-20-22

PRESTIGE DEFAULT SERVICES, LLC
Sale Line: (877) 440-4460



Briana Young, Trustee Sale Officer

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California} ss
County of Orange}

On _____ before me, _____ Notary Public, personally appeared **Briana Young** personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.
WITNESS my hand and official seal.

Signature _____ (Seal) See
Attached

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

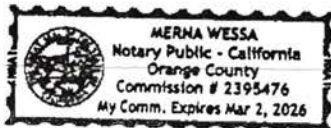
State of California

County of Orange

On 12/20/2022 before me, Merna Wessa, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Briana Young
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer – Title(s): _____☐ Partner – ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer is Representing: _____

Signer's Name: _____

☐ Corporate Officer – Title(s): _____☐ Partner – ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer is Representing: _____

